

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE:

B-219678

DATE:

October 22, 1985

MATTER OF:

P&P Brothers General Services

DIGEST:

Where protester alleges that it did not have sufficient time to prepare its bid because it did not obtain a copy of the solicitation until 1-day before bid opening, the protest is untimely because it was filed after bid opening. This is so notwithstanding the consideration of the protest on the merits by the agency.

P&P Brothers General Services (P&P), the incumbent contractor, protests the award under invitation for bids No. N62477-85-B-6043, issued by the Naval Air Station (Navy), Patuxent River, Maryland, for janitorial services because it was not provided a copy of the IFB.

P&P alleges that it did not become aware of the IFB until July 18, 1985, when it personally obtained a copy from the Navy, which was 1-day before bid opening. Although P&P submitted a timely bid, it contends that the award should be overturned and the contract resolicited because it did not not have sufficient time to prepare its bid.

We dismiss the protest as untimely.

The Navy reports that bid opening was July 19, 1985, at 2:00 p.m., and that P&P did not protest to the Navy until 3:15 p.m. that day. Under our Bid Protest Regulations, we will not consider a protest on an issue that was not timely raised at the contracting agency level. 4 C.F.R. § 21.2(a)(3) (1985). To be timely, a protest alleging an apparent solicitation impropriety must be filed before bid opening. See Marine Industrial Insulators, B-217443, June 14, 1985, 85-1 C.P.D. ¶ 684. The fact that the agency considered the protest on the merits does not alter the result. Our Bid Protest Regulation may not be waived by the action or inaction of a procuring activity. Evans, Inc.-- Request for Reconsideration, B-213289.3, Feb. 27, 1984, 84-1 C.P.D. ¶ 240.

033556

Even if the protest was timely, we have held that the propriety of a particular procurement rests upon whether adequate competition and reasonable prices were obtained by the government and not upon whether a particular bidder (even the incumbent contractor) was given an opportunity to bid. The bidder bears the risk of nonreceipt or delay in receipt of solicitations and amendments in the absence of substantive proof that the agency deliberately attempted to exclude a bidder from participating in the procurement. Maryland Computer Services, Inc., B-216990, Feb. 12, 1985, 85-1 C.P.D. ¶ 187.

P&P does not allege nor does the record establish that the Navy deliberately intended to exclude it from the competition. The record shows that 11 firms including P&P submitted bids and that the low bidder's price was well below the government estimate. Therefore, adequate competition and reasonable prices were obtained in the procurement.

The protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel